IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 153 of 2006.

Decided on : October 16, 2006.

Satish Kumar & anr. .....Appellants.

VERSUS

The Mubarikpur (Har) Cooperative Agriculture Society. .....Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?[1]

For the Appellants : Mr. N.K.Thakur, Advocate.

For the Respondent : Mr. Ajay Sharma, Advocate.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondent- plaintiff, which is a cooperative society, filed a suit against the present appellants-defendants, seeking an injunction, restraining the defendants from changing the nature of the suit property, which was alleged to be joint of the parties and some other persons, who had not been impleaded as party to the suit. It was alleged that all the co-sharers, including the parties, had raised some construction on the joint property, the total area of which was 270 square meters and that some portion was still lying vacant. It was alleged that the appellants- defendants had threatened to raise construction upon the vacant portion and if they were allowed to

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Whether the reporters of the local papers may be allowed to see the Judgment?

raise such construction, the built up area in their possession would be in excess of their share in the joint property.

3. Suit was contested by the appellants- defendants. They denied that they were threatening to raise any construction. They also denied that they had already built upon a portion equivalent to their share in the joint property. Trial court decreed the suit, holding that property being joint, none of the co-sharer could raise construction, thereby changing the nature of the joint property, without the consent of others. Appeal filed by the appellants stands dismissed by the District Judge. Now the appellants- defendants have come in appeal to this Court.

4. Learned counsel representing the appellants says that no site plan of the vacant area having been filed by the plaintiff and at the same time there being no evidence that the appellants-defendants were threatening to raise construction on the vacant site in excess of their share, the injunction could not have been granted.

5. I have gone through the record and heard the learned counsel for the parties.

6. A perusal of the record as also the finding recorded by the two courts below show that all the co-sharers have constructed shops and other structures on the joint property and only a small portion of the land is lying vacant, which the plaintiff claims to fall to its exclusive share. No doubt, there is no evidence indicating whether that vacant share in its entirety has to go to the plaintiff to make up its share as defined in the jamabandi, yet keeping in view the fact that all the joint owners have raised construction on separate portions of the

joint property, none of them has the right to raise the construction upon the remaining vacant land, thereby changing its nature, without the consent of the other co-sharers or until the partition takes place.

7. In view of the above stated position, I do not think any substantial question of law arises. Otherwise also, when the case of the appellants is that they do not intend to raise any construction, the injunction as granted by the two courts below is not going to affect them. The two courts below have granted a decree that the nature of that portion of the joint property, which is lying vacant on the spot shall not be changed by raising construction till partition takes place between the parties.

8. For the foregoing reasons, the appeal is dismissed.

October 16, 2006. **(Surjit Singh)**
(*Hem*) **Judge.**